

Applicant : Charles B. Worrick III et al.
Serial No. : 10/799,939
Amdt dated: May 27, 2007
Reply to Office Action mailed on February 27, 2007
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Attorney's Docket No.: Z-03367/Case 8134

REMARKS

Claim Status

Applicants' Claims 1, 3, 7-10, 12, 13, 15, 18-21 and 24-26 are pending in the present application. Claims 2, 4-6, 11, 14, 16, 17, 22, and 23 have been cancelled. No additional claim fee is believed to be due. Claims 1 and 13 have been amended. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order.

Claim Objections

The Office Action rejected the amendment filed 12/19/2006 under 35 U.S.C. §132(a) stating that new matter was introduced into the disclosure. In particular, the added material to Claims 1 and 13 which the Office Action states is not supported by the specification is as follows: "only along a leading edge of the button substrate". While not conceding that this rejection is proper, or conceding any of the positions taken in the Office Action, Applicants have removed the added limitation from both Claims 1 and 13.

Rejection Under 35 USC §112, first and second paragraphs

Claims 1, 3, 7-10, 12, 13, 15, 18-21, and 24-26 are rejected in the Office Action under 35 USC §112, first and second paragraphs, for failing to comply with the written description requirement and as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention, respectively. The Office Action states that the limitation "only along a leading edge of the button substrate" is without support in Applicants' specification. As noted above, Applicants have removed the added limitation from base Claims 1 and 13.

The Office Action states that it is also unclear what constitutes a button substrate. Applicants argue that the button substrate is clearly defined in many instances throughout Applicants' specification and figures. In one instance in Applicants' specification, referring to

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Figs. 31-33 and 39, Applicants state: "the release button 196 also includes latch arms 204 and 206, a cylindrical extension 202 sized to receive spring 205, and a button substrate 198 from which the pusher arms, latch arms and cylindrical extension extend." The release button 196, shown in Fig. 31, points to a canopy 200 extending around a periphery of button substrate 198, very clearly depicting the button substrate 198 and the canopy 200 location in relation to the substrate. Figs. 32 and 33 also show the canopy and the button substrate. Additionally, referring to Fig. 43, Applicants specification states that, "as the release button 196 is actuated, the pusher arms 192 and 194 are pushed forward and the canopy 200 buckles between the button substrate 198 and the surface 306."

Hence, Applicants assert that the button substrate is clearly defined and shown in Applicants' specification and figures and hence proper under 35 USC §112, second paragraph. Accordingly, the rejections under 35 USC §112, first and second paragraphs, should be removed.

Rejection Under 35 USC §103(a) Over Apprille ('071) in view of Kirk (US Patent 3,048,673)

Claims 1, 3, 7-10, 13, 15, 18-21, 25 and 26 are rejected in the Office Action under 35 U.S.C. 103(a) over Apprille in view of Kirk.

Applicants fail to see in Apprille a disclosure or suggestion of a "flexible canopy". Apprille discloses an ejector button 50 which pushes ejector 48 outward on a track. The Examiner equates Apprille's ejector button 50 to Applicants' "flexible canopy", however, Applicants maintain the Apprille ejector button 50 is neither flexible nor a canopy.

Consequently, even if button 50 were construed as a canopy (which is not conceded) the lack of flexibility signifies, Applicants contend, and the Examiner submits, that Apprille does not disclose or suggest a canopy that buckles during actuation and returns to an unbuckled state after actuation. The Examiner therefore cites Kirk as disclosing a canopy that buckles.

However, Kirk's electric on/off switching device has a "laterally extending ... resilient flange 22" which, after applied pressure on end 21p, rather than buckle, extends out radially as shown clearly via the dotted lines in Kirk's Fig. 3. Applicants contend that this action thereby creates a new canopy "footprint" that is *larger* than the footprint of the original or starting

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position prior to pressure, and with flange 22 extending outwardly or flattening out, there is no buckling.

On the contrary, Applicants' canopy 200 buckles or curls inward when the button substrate 198 is moved toward the cartridge (see Applicants' Figs. 42-43). In Fig. 43, the button is moved along the direction of arrows shown and it clearly can be seen that Applicants' canopy does not extend outwardly (or flatten out) but rather it buckles or folds/curls inward against the wall 306. As such, the canopy "footprint" or area in Fig. 43 after the button is moved is smaller than the footprint area in Fig. 42 (original state).

Applicants' specifications state the purpose of the buckling is that the "buckling ... action maintains the position of the canopy between the wall and the button substrate..." (specification page 2, lines 7-9, emphasis added) such that "as the release button 196 is actuated, the pusher arms 192 and 194 are pushed forward and the canopy 200 buckles *between* the button substrate 198 and the surface 306. When the button 196 is released, the spring 205 forces the button 196 back to its initial position and the canopy 200 recovers to its unbuckled state." (See specification page 20, lines 15-21, emphasis added). Hence, Applicants' buckling occurs in the area *between* two ends, the button substrate end and the wall end. The buckling or folding over would not occur in between these ends if the wall 306 was not stationary as shown in Fig. 43.

Accordingly, Applicants contend that Kirk has no disclosure or suggestion of ...the flexible canopy buckles...causing the free edge to move along the wall...as recited in Applicants' Claims 1 and 13. Applicants argue Kirk teaches away from these limitations.

Hence, even assuming there is a motivation to combine the two cited references, Applicants assert that the resulting combination still would not provide "...the flexible canopy buckles when the button substrate is moved...causing the free edge to move along the wall" as recited in Applicants' base Claims 1 and 13.

Accordingly, Applicants' Claims 1, 3, 7-10, 13, 15, 18-21, 25 and 26 are patentably distinct under 35 U.S.C. §103(a) over Apprille in view of Kirk.

Furthermore, Applicants maintain that none of the art of record teach or suggest ...a flexible canopy being constructed so that a free edge of the flexible canopy contacts a wall formed by the handle casing when the release button is in an unloaded position, and the flexible canopy buckles when the button substrate is moved towards the cartridge as a user actuates the

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release button, causing the free edge to move along the wall... as recited in Applicants' base Claims 1 and 13.³

Rejection Under 35 USC §103(a) Over Apprille ('071) in view of Kirk (US Patent 3,048,673) and further in view of Jones (US Patent 6,898,855)

The Examiner rejected Applicants' Claims 12 and 24 as being unpatentable over Apprille in view of Kirk as applied to Claims 1 and 13 above and further in view of Jones.

Jones neither describes nor suggests, whether taken together or separately with Apprille and/or Kirk, ... a canopy comprises a thermoplastic elastomer...as recited in Applicants' dependent Claims 12 and 24. Jones discloses an ergonomic scraper with a base grip 50 and other parts being made of a combination of hard and soft plastic such as thermo-plastic and elastomer, respectively (Jones, col. 8, lines 1-5). Jones does not disclose or suggest a canopy. The Examiner states that the motivation to combine is to provide a more ergonomic grip as disclosed in Jones. However, Applicants' canopy does not correspond or equate to the Jones' grip and hence, Applicants argue that, while the use of a thermoplastic elastomer on a button may be motivated by Jones, the use of such a material on a canopy is not.

For these and above-discussed reasons in conjunction with base Claims 1 and 13 from which Claims 12 and 24 depend, Applicants' Claims 12 and 24 are patentably distinct over the cited references under 35 USC §103(a) and the rejection should be removed.

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CONCLUSION

In light of the above remarks, early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of the pending Claims is respectfully requested.

Respectfully submitted,
THE GILLETTE COMPANY

By 
Signature

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